



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

August 30, 2011

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IRM 5.12.3
IRM 5.14

MEMORANDUM FOR DIRECTOR, ADVISORY AND INSOLVENCY
DIRECTORS, FIELD COLLECTION AREA OPERATIONS
DIRECTOR, CAMPUS FILING AND PAYMENT
COMPLIANCE
DIRECTOR, CAMPUS COMPLIANCE OPERATIONS
(CINCINNATI)

FROM: Scott D. Reisher /s/ **Scott D. Reisher**
Director, Collection Policy

SUBJECT: Reissuance of Interim Guidance for Subordinations to Factors

The purpose of this memorandum is to reissue the interim guidance memorandum titled Interim Guidance for Subordinations to Factors originally dated November 20, 2008, with control number SB/SE-05-1108-053 and reissued on November 19, 2009, with control number SB/SE-05-1109-065 and again on November 17, 2010, with control number SB/SE-05-1110-058.

This Interim Guidance serves to update Internal Revenue Manual (IRM) 5.12.3.13, Subordination of Liens, as it applies to the government's lien interest in current and future accounts receivable. Specifically, the language in IRM 5.12.3.13(6), revised 09-07-2006, regarding subordinations of accounts receivable has caused confusion as to its meaning and the procedures to follow. That paragraph of the IRM will be updated and expanded as follows:

New IRM text:

- a. Granting a subordination on accounts receivable should be limited to the accounts receivable (AR) existing on the issuance date of the subordination certificate and must be for no longer than one year with no extensions. Any

request for extension must be treated and worked as a new application. All such subordinations must meet the criteria noted in IRM 5.12.3.13(1) and (2).

Note: The subordination cannot be for longer than 90 days if an in-business taxpayer has not paid the preceding quarterly trust fund tax.

- b. Documentation should identify convincingly that subordination of the government's priority will facilitate collection of the taxes due. Since periodic payments are involved, a signed installment agreement (Form 433-D) must be secured in conjunction with the subordination and will be subject to the normal termination and default provisions. This must include a requirement to make timely Federal Tax Deposits if the taxpayer has an open Form 941 filing requirement. These provisions will also apply to the subordination.
- c. The description of the assets included in the subordination must read, "all [or specific] accounts receivable belonging to [taxpayer name] in existence on mm/dd/yyyy and coming into existence prior to mm/dd/yyyy." If only specific accounts receivable are subject to a factoring agreement, describe the specific accounts receivable to be included on the subordination certificate.
- d. For cases assigned to Field Collection revenue officers, a complete investigation of the taxpayer's ability to pay and the Trust Fund Recovery Penalty (TFRP) investigation must be completed or in process before granting an in-business installment agreement as outlined in IRM 5.14.7. If a request to extend the subordination is anticipated, one condition of the installment agreement should be to update financial information annually.
- e. For applications to subordinate to a factor on taxpayer trust fund accounts not assigned to a Field Collection revenue officer, Advisory will initiate a TFRP investigation and may issue an Other Investigation (OI) to Field Collection on cases for which field actions are necessary. These OIs, sent by Advisory, are mandatory OIs for the field. The information and any recommendations on the TFRP investigation, along with any information on an installment agreement, should be forwarded to Advisory. Advisory will follow the direction in IRM 5.7.3.2(4) regarding completing TFRPs on cases that cannot be loaded to the Automated Trust Fund Recovery Program (ATFR), i.e., non-St 26 cases.
- f. The Form 669-D will also list the terms of the subordination, including termination for failure to make payments or failure to live up to the terms of the installment agreement. The factoring agent will be given written notification of the termination of the subordination on accounts receivable. Payments should be made directly from the factor to the Service, where possible.
- g. The attached forbearance agreement may be used in addition to (but not in lieu of) the Form 669-D if the taxpayer wishes additional clarification of the terms of the agreement, but it is not required by the Service.

h. Advisory will monitor these subordinations during the period they are in effect.

If you have any questions, please contact me, or a member of your staff may contact Kyle Romick, Senior Program Analyst.

Attachment

cc: www.irs.gov

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(1). On [date], [date], [date], and [date] the Internal Revenue Service (hereinafter the Service), filed Notices of Federal Tax Liens with the Secretary of State, State of _____.

(3). On [date] the Factor recorded a UCC financing statement with the [state name] Secretary of State, which financing statement included Taxpayer's accounts receivable as collateral for the financing .

(4). As consideration for the Service entering into this agreement, the Taxpayer agrees to pay the Service an initial payment (if applicable) in the amount of: [dollar amount written out in words then repeated in parentheses in numbers] ; to be received on [date].

(6). The installment agreement that accompanies the subordination agreement will be monitored by the AIQ – Advisory Function in conjunction with this subordination agreement and payments will be sent to:

1 Name, title, ID Number, address and phone number of office/employee to
2 whom payments will be mailed:

3 (7). If the period of the installment agreement extends beyond the period of the
4 subordination, the taxpayer shall apply for a new subordination agreement at least 60 days
5 prior to the end date of the current subordination.

6 (8). The Taxpayer further agrees to remain current in the filing and paying of all Federal
7 Taxes during the period of this agreement and will furnish proof of current Federal Tax
8 Deposits by-weekly.

9 (9). The Taxpayer further agrees to furnish to the Service each month a listing of its current
10 accounts receivable.

11 (10). The Taxpayer also agrees to identify which of its current accounts receivable have been
12 pledged to the Factor for collection by the Factor and upon which advances have been made.

13 (11). The listing in (7) above and information cited in (8) above will be furnished monthly to:

14 Name, title, ID Number, address and phone number of Advisor to whom
15 listing will be sent:
16

17 (12). The installment agreement that accompanies this subordination agreement will make
18 reference to this subordination agreement, specifically to paragraphs (4) through (11) above.

19 (13). In consideration of the foregoing, the Director agrees not to assert the Service's tax lien
20 priority under I.R.C. §§ 6323 (a) or to levy pursuant to I.R.C. § 6331 against the Taxpayer's
21 accounts receivable, which accounts are used as security for advances made by the Factor to
22 the Taxpayer prior to the termination of this agreement.

23 (14). The failure of the Taxpayer to comply with the terms set forth in paragraphs (4) through
24 (9) above will constitute a default of this agreement and default of the accompanying
25 installment agreement.

26 (15). Upon failure of the Taxpayer to comply with the terms set forth in paragraphs (4)
27 through (9) above, the Director or other authorized representative will notify the parties to this
28 agreement in writing by certified mail that a default has occurred The Taxpayer has 30 days to

1 cure either the default in the subordination agreement or the default in the accompanying
2 installment agreement

3 (16). If the Taxpayer does not cure the default within 30 days of the date of the
4 abovementioned letter, then this agreement is deemed terminated and the Service will no
5 longer forbear from enforcing its lien rights (including levy) against the Taxpayer's accounts
6 receivable that have *not* been pledged for advances made prior to the termination of this
7 agreement, as otherwise permitted under the Internal Revenue Code.

8 (17). The failure of the Director or other authorized representative of the Service to notify the
9 parties of any default will not constitute a waiver of either the default of the installment
10 agreement or the subordination agreement.

11 (18). Pursuant to I.R.C. § 6103(c), the Taxpayer consents to the disclosure of tax return
12 information to the Factor to the extent required to show that this agreement is in default.

13 (19). This agreement concerns only the specific accounts receivable which the Taxpayer has
14 pledged to the Factor as security for the advances made by the Factor to the Taxpayer.

15 (20). Any change to the compensation to the Factor or to the Factor's security interest in the
16 Taxpayer's assets must be approved by Service or the Service will not forbear from asserting
17 its lien priority as to the changed compensation.

18 (21). The period of this subordination shall be [specify time not exceeding one year] from the
19 date the Service approves the subordination, as evidenced on the Form 669-D, Certificate of
20 Subordination of Federal Tax Lien.

21
22 Signatures on Page 4, Attached
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Signature Page

Factor: Date

By:

Taxpayer: Date

By:

United States of America
Director, Advisory & Insolvency
For Internal Revenue Service, SB/SE

By: [Name]
Advisory Group Manager